

REMARKS/ARGUMENTS

Claims 1 and 20-36 are pending in this application. By this Amendment, claims 2, 3, 5 and 6 are cancelled without prejudice or disclaimer, and claims 1 and 20 are amended. Reconsideration in view of the above amendments and following remarks is respectfully requested.

Entry of the amended claims is proper under 37 C.F.R. §1.116 since the amendments: (1) place the application in condition for allowance (for the reasons discussed herein); (2) do not raise any new issues requiring further search and/or consideration (since the amendments amplify issues previously discussed throughout prosecution without incorporating additional subject matter); (3) satisfy a requirement of form asserted in the previous Office Action; and/or (4) place the application in better form for appeal (if necessary). Entry is thus requested.

A. Claims 20-36 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection.

Applicant respectfully submits that the Federal Circuit has repeatedly held that definiteness of claim language must be analyzed, not in a vacuum, but in light of, *inter alia*, the content of the particular application disclosure and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. *See, e.g., In re Marosi*, 710 F.2d 799, 218 U.S.P.Q. 289 (Fed. Cir. 1983). In view of the holding by the Federal Circuit, Applicant submits that the claims are clear

enough that one of ordinary skill in the art would be able to ascertain the boundaries of the presently claimed invention.

Regarding claims 20 and 29, Applicant submits that the language contained in both claims is clear. Applicant respectfully points out, however, that these claims do not commonly recite the alleged indefinite phrase the Examiner is referring to in the Office Action.

Rather, claim 20 recites a phrase the claims a “certification authority” that includes a “second portion” and distinguishes the “second portion” from a “first portion”. Claim 29 does not recite any of these elements regarding the “certification authority”, i.e., the phrase the Examiner refers to in the Office Action. Clarification is respectfully requested.

To obviate the rejection regarding claim 20, Applicant has amended the claim to clarify that the “first biological individuality data is divided into at least first and second portions”. Further, the “certification authority includes said second portion of said first biological individuality data”, “wherein said first and second portions of said first biological individuality data contain different information”. As such, it is clear that the separate portions of the first biological individuality data are distinct.

Regarding the rejection of claims 21-22 and 31-32, Applicant respectfully submits that the meaning and requisite degree of the phrases “comprises less than 100%” and “comprises 100%” are readily ascertainable by the claims and supported by the present specification as originally filed.

For instance, claims 21 and 22 depend from the system of claim 20, which refers to an authentication card having a first portion and a second portion of a first biological individuality data. Claim 21 merely recites that the first portion may comprise less than 100% of the first biological individuality data and the remainder is in the second portion, which is shown in the present specification. Claim 22 merely recites that there is a third portion and that collectively that first, second and third portions comprise 100% of the first biological individuality data.

The present specification refers to the percentage of data (information) in several places. For instance, at page 44, lines 23-24, the present specification recites that the authentication card may comprise 60% of the information, the certification authority may comprise 30%, and the intermediate authority may comprise 10%. In addition, the present specification recites at page 53, lines 25-27, that the authentication card may have more than 60%, and at page 54, lines 18-20, the authentication card may store (comprise) 100% of the information.

Similarly, claims 31 and 32, which depend from the system of claim 29, recite similar claim language. Thus, support for these claims can be found in the present specification, as discussed above.

Consequently, for at least these reasons, the § 112, second paragraph rejections should be withdrawn.

B. Claims 1-3 and 5-6 are rejected under 35 U.S.C. §102(e) as being anticipated by Dulude et al. (U.S. Patent No. 6,310,966) hereafter (“Dulude”). Applicant respectfully traverses

this rejection for at least the reasons discussed in the Amendment dated March 4, 2004, as well as the additional reasons discussed below.

As an initial matter, Applicant respectfully points out that the Office Action states that claims 1-3 and 5-6 are rejected, but does not clearly indicate whether claims 20-36 are also rejected under § 102(e). Rather, the Office Action merely refers to claims 20 and 29 on page 4 of the rejection. Clarification is respectfully requested.

Applicant also points out that claims 2-3 and 5-6 are cancelled, and thus the grounds of rejection over these claims are moot.

As the Office is aware, a rejection under 35 U.S.C. § 102 is only proper when the claimed subject matter is identically described or disclosed in the prior art. (*In re Arkley*, 455 F.2d 586, 587 (CCPA 1972); *see also* M.P.E.P. § 706.02(a) (explaining that “[a]reference must teach every aspect of the claimed invention either explicitly or impliedly.”).) In the present case, the claimed invention is not identically disclosed in Dulude, and thus the rejection under § 102(e) is not merited.

In particular, the biometric certification system of Dulude discloses, *inter alia*, a biometric certificate, which may be generated in a variety of ways. For instance, the biometric certificate may be generated “by processing the registration biometric data from the registration biometric input device”, “processing the user input data”, and “processing the public key of the user at a biometric certificate generator of a registration authority”. (Column 4, lines 55-65.) The biometric certificates are then “stored in a memory, such as a

biometric database or a memory of a smart card.” (Column 5, lines 33-34.)

Unlike present claim 1, however, Dulude does not disclose or suggest a certification authority that: 1) “*holds* the record of the remaining part of the biological individuality data that has been obtained at the registration station but not recorded in the user authentication card”, 2) “*compares* the biological individuality data of the user obtained at the authentication access terminal with the part of the biological individuality data missing in the user authentication card in response to inquiry from the authentication access terminal”, and 3) “*sends* the comparison result to the authentication access terminal for authentication”.

In addition, Dulude does not disclose, as also recited in claim 1, that “the at least one certification authority dividedly records the remaining part of the biological individuality data obtained at the registration station but not recorded in the user authentication card, and the at least one certification authority compares the biological individuality data of the user input at the authentication access terminal with the part of the biological individuality data stored in the certification authority in response to an inquiry from the authentication access terminal or other certification authority for further authentication.”

At best, the biometric certificates of Dulude are “stored in a memory”, as discussed above. However, that does not qualify as, or is even suggestive of, the elements of the certification authority of the presently claimed invention. Thus, the rejection of present claim 1 is under § 102 (e) is improper and should be withdrawn.

Regarding present claims 20 and 29, both claims recite, *inter alia*, a system that requires an authentication card, an authentication terminal, a certification authority and an authentication device, all of which Dulude does not disclose or suggest.

For instance, in present claim 20, the certification authority is “adapted to communicate with said authentication terminal, wherein said certification authority includes said second portion of said first biological individuality data, and wherein said first and second portions of said first biological individuality data contain different information from within said first biological individuality data”. Dulude, on the other hand, is completely silent regarding a certification authority that includes differing portions of a first biological individuality data.

Moreover, regarding present claim 29, the authentication device is “adapted to communicate with said authentication terminal to determine a level of security and verify authentication, wherein said level of security determines a quantity of authentication and thus an amount of comparison data that must be collected and used to verify authentication, and wherein said authentication device conducts a verification of authentication based on said level of security using an effective amount of authentication data relative to said amount of comparison data collected.” Dulude, on the other hand, is not concerned with or of suggestive of *both* determining a level of security and verifying authentication, much less “using an effective amount of authentication data relative to said amount of comparison data collected”.

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Thus, for at least these reasons, claims 20 and 29, as well as those claims dependent therefrom, are allowable over the Dulude and any rejections over these claims should be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, Bryant L. Young, at the telephone number listed below. Favorable consideration and prompt allowance are earnestly solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
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